



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1994

Mr. Richard O. Burst  
Assistant County Attorney  
Cameron County Courthouse  
974 East Harrison Street  
Brownsville, Texas 78520

OR94-347

Dear Mr. Burst:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23668.

Cameron County (the "county") received a request for the following:

- (1) three years of itemized reimbursements to Dr. Gustavo Stern;
- (2) a written explanation of various codes, excluding names of juveniles;
- (3) contracts and side agreements for the past three years with Dr. Stern for the Cameron County Indigent Health Program, Juvenile Department, Restitution Center, Drug Task Force, Central Diagnostic Clinic, and Jail Detention;
- (4) A written explanation of company physicals; and
- (5) "face sheets with authorizing signatures for all documents."

You have submitted to this office as responsive to the request the following items :

- (1) copies of contracts and agreements with Dr. Stern;
- (2) copies of entries in a cash disbursement journal that include code numbers, the name of the care provider, the name of each patient, and the amount spent per patient;

- (3) a sheet with a short summary of the code numbers listed in the above journal, with the codes indicating not only the vendor who was paid for the service but the general type of medical or other service delivered;<sup>1</sup>
- (4) copies of each check paid to Dr. Stern, with reference to each patient who was treated, the dates and amounts billed;
- (5) invoices that were approved in open commissioner's court meetings, with references to each patient and the amounts paid;
- (6) itemized bills submitted by Dr. Stern, showing the patient name, date, treatment, diagnosis and cost;
- (7) indigent health program medical claim forms filed with the county that give patient names and treatment information; and
- (8) statements sent to the county showing the patient name, type of doctor visit and cost.

You indicate that you have already supplied the requestor copies of all the requested contracts and agreements made with Dr. Stern. You also state that you have supplied the requestor copies of the cash disbursement journals and the checks paid to Dr. Stern but have withheld the patient names which were shown on the documents. It is our understanding that you have not released the other documents. You ask if documents showing patient information are excepted by section 552.101 of the Open Records Act.<sup>2</sup>

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also excepts information made confidential by a constitutional or common-law right of privacy. You urge that these records are made confidential under section 5.08(b) of the Medical Practice Act, V.T.C.S. art. 4495b:

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<sup>1</sup>You indicate that this document will provide information about the codes, but is not a written explanation of each code, as sought by the requestor. We note that the county is not obligated to compile new documents or information in response to an open records request. See Gov't Code 552.002 (defining a "public record"); *Economic Opportunities Dev. Corp. v. Bustamente*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio, 1978, writ dismissed) (official cannot be compelled to produce documents not in his possession); Open Records Decision No. 342 (1982) at 2 (Open Records Act applies only to documents already in existence).

<sup>2</sup>As the requestor has indicated he is not requesting the names of juvenile patients, we understand this request to concern only information about adult patients, and we do not address the availability of information about juveniles.

Records of the identity, diagnosis, evaluation or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

It is not apparent that the billing records you submitted to this office are medical records under this provision. Therefore, we do not consider the applicability of section 5.08(b). Further, review of the documents you submitted does not indicate that the information is excepted under section 552.101 by a right of privacy.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) 931 *cert. denied*, 430 U.S. 931 (1977), the court determined that information may be excepted from disclosure by a constitutional or common-law right of privacy. There is a constitutional right of privacy that exists in matters relating to marriage, procreation, contraception, family relationships, child-rearing and education. *Id.* at 679-681. A common-law right of privacy will except information from disclosure if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Id.* at 682-686. In Open Records Decision No. 262 (1980), this office considered that certain medical information could be excepted by a constitutional or common-law right of privacy under section 552.101. Some of the types of protected medical information would include those involving emotional or mental illness, obstetrical or gynecological treatment and care for drug or alcohol abuse.<sup>3</sup> *Id.* at 2; Open Records Decision No. 470 (1987) at 4 (fact that an employee broke out in hives due to job-related emotional distress would be protected by common-law privacy). This office has stated that specific, rather than general information, could be excepted:

only specific illness, injury and examination facts are excepted from disclosure by [section 552.101]. For example, detailed emergency medical service reports relating to pregnant women under the care of lay midwives are excepted from disclosure, whereas emergency medical service incident reports which provide relatively little detail are not ordinarily protected from disclosure.

Attorney General Opinion JM-229 (1984) at 3 (citations omitted). However, even specific information about illness or injury may not be protected, depending on the type of illness or injury. Open Records Decision Nos. 600 (1992) at 7-8 (information concerning public employees' minor on-the-job injuries, including a twisted back, cuts, bruises, eye-injury and insect bites, not be protected by common-law privacy); 422 (1984) (information showing victim had a self-inflicted gunshot wound not protected by common-law privacy).

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<sup>3</sup>However, this is not an exhaustive list of the medical information that may be protected by the constitutional right of privacy. Open Records Decision No. 343 (1982) at 2.

We cannot determine what types of medical treatment and procedures are listed on the indigent claim forms, as they are listed by code number. As you have not provided information about the code numbers, we are unable to determine if any of this information is confidential. We caution, however, that the improper release of information deemed confidential by law, *e.g.*, the constitutional or common-law right of privacy, is a criminal offense. Gov't Code § 552.352. The remaining information in these records does not appear to be confidential under a constitutional right of privacy. Nor would the information be confidential under a common-law right of privacy, since the medical information given does not appear to be embarrassing or intimate. The non-confidential information must therefore be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MRC/rho

Ref.: ID# 23668

Enclosures: Submitted documents

cc: Mr. Mario R. Villarreal  
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(w/o enclosures)